

AMENDMENT TO H.R. 878, AS REPORTED
OFFERED BY MR. MCINNIS OF COLORADO, MRS.
JOHNSON OF CONNECTICUT, AND MR. HOUGHTON

Redesignate section 302 as section 304 and insert after section 301 the following new sections (and conform the table of contents accordingly):

1 SEC. 302. TAX TREATMENT OF CORPORATE EXPATRIATION.

2 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
3 lating to provisions affecting more than one subtitle) is
4 amended by adding at the end the following new section:

**5 “SEC. 7874. TAX TREATMENT OF CORPORATE EXPATRIA-
6 TION.**

7 “(a) INVERTED CORPORATIONS TREATED AS DOMES-
8 TIC CORPORATIONS.—

9 “(1) IN GENERAL.—If a foreign incorporated
10 entity is treated as an inverted domestic corporation,
11 then, notwithstanding section 7701(a)(4), such enti-
12 ty shall be treated for purposes of this title as a do-
13 mestic corporation.

14 “(2) EXCEPTION.—Paragraph (1) shall not
15 apply for purposes of determining under section 367
16 whether any shareholder recognizes gain in connec-
17 tion with the acquisition.

18 “(3) INVERTED DOMESTIC CORPORATION.—For
19 purposes of this section, a foreign incorporated enti-



1 ty shall be treated as an inverted domestic corpora-
2 tion if, pursuant to a plan (or a series of related
3 transactions)—

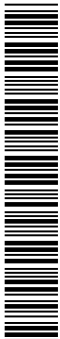
4 “(A) the entity completes after March 4,
5 2003, the direct or indirect acquisition of sub-
6 stantially all of the properties held directly or
7 indirectly by a domestic corporation or substan-
8 tially all of the properties constituting a trade
9 or business of a domestic partnership,

10 “(B) after the acquisition at least 80 per-
11 cent of the stock (by vote or value) of the entity
12 is held—

13 “(i) in the case of an acquisition with
14 respect to a domestic corporation, by
15 former shareholders of the domestic cor-
16 poration by reason of holding stock in the
17 domestic corporation, or

18 “(ii) in the case of an acquisition with
19 respect to a domestic partnership, by
20 former partners of the domestic partner-
21 ship by reason of holding a capital or prof-
22 its interest in the domestic partnership,
23 and

24 “(C) the expanded affiliated group which
25 after the acquisition includes the entity does



1 not have substantial business activities in the
2 foreign country in which or under the law of
3 which the entity is created or organized when
4 compared to the total business activities of such
5 expanded affiliated group.

6 “(4) TERMINATION.—This subsection shall not
7 apply to any acquisition completed after December
8 31, 2004.

9 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
10 poses of this section—

11 “(1) FOREIGN INCORPORATED ENTITY.—The
12 term ‘foreign incorporated entity’ means any entity
13 which is, or but for subsection (a) would be, treated
14 as a foreign corporation for purposes of this title.

15 “(2) EXPANDED AFFILIATED GROUP.—The
16 term ‘expanded affiliated group’ means an affiliated
17 group as defined in section 1504(a) but without re-
18 gard to paragraphs (2), (3), and (4) of section
19 1504(b), except that section 1504(a) shall be applied
20 by substituting ‘more than 50 percent’ for ‘at least
21 80 percent’ each place it appears.

22 “(3) CERTAIN STOCK DISREGARDED.—There
23 shall not be taken into account in determining own-
24 ership under subsection (a)(3)(B)—



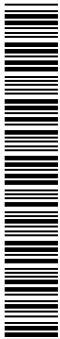
1 “(i) stock held by members of the ex-
2 panded affiliated group which includes the
3 foreign incorporated entity, or

4 “(ii) stock of such foreign incor-
5 porated entity which is sold in a public of-
6 fering related to the acquisition described
7 in subsection (a)(3)(A).

8 “(4) PLAN DEEMED IN CERTAIN CASES.—If a
9 foreign incorporated entity acquires directly or indi-
10 rectly substantially all of the properties of a domes-
11 tic corporation or partnership during the 4-year pe-
12 riod beginning on the date which is 2 years before
13 the ownership requirements of subsection (a)(3)(B)
14 are met, such actions shall be treated as pursuant
15 to a plan.

16 “(5) CERTAIN TRANSFERS DISREGARDED.—The
17 transfer of properties or liabilities (including by con-
18 tribution or distribution) shall be disregarded if such
19 transfers are part of a plan a principal purpose of
20 which is to avoid the purposes of this section.

21 “(6) SPECIAL RULE FOR RELATED PARTNER-
22 SHIPS.—For purposes of applying subsection
23 (a)(3)(B) to the acquisition of a domestic partner-
24 ship, except as provided in regulations, all partner-
25 ships which are under common control (within the



1 meaning of section 482) shall be treated as 1 part-
2 nership.

3 “(7) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be appropriate to de-
5 termine whether a corporation is an inverted domes-
6 tic corporation, including regulations—

7 “(A) to treat warrants, options, contracts
8 to acquire stock, convertible debt interests, and
9 other similar interests as stock, and

10 “(B) to treat stock as not stock.

11 “(c) SPECIAL RULE FOR TREATIES.—Nothing in sec-
12 tion 894 or 7852(d) or in any other provision of law shall
13 be construed as permitting an exemption, by reason of any
14 treaty obligation of the United States heretofore or here-
15 after entered into, from the provisions of this section.

16 “(d) REGULATIONS.—The Secretary shall provide
17 such regulations as are necessary to carry out this section,
18 including regulations providing for such adjustments to
19 the application of this section as are necessary to prevent
20 the avoidance of the purposes of this section, including the
21 avoidance of such purposes through—

22 “(1) the use of related persons, pass-through or
23 other noncorporate entities, or other intermediaries,
24 or



1 “(2) transactions designed to have persons
2 cease to be (or not become) members of expanded
3 affiliated groups or related persons.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions for subchapter C of chapter 80 is amended by adding
6 at the end the following new item:

 “Sec. 7874. Tax treatment of corporate expatriation.”

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years ending after
9 March 4, 2003.

10 **SEC. 303. EXPRESSING THE SENSE OF THE CONGRESS THAT**
11 **TAX REFORM IS NEEDED TO ADDRESS THE**
12 **ISSUE OF CORPORATE EXPATRIATION.**

13 (a) FINDINGS.—The Congress finds that—

14 (1) the tax laws of the United States are overly
15 complex;

16 (2) the tax laws of the United States are among
17 the most burdensome and uncompetitive in the
18 world;

19 (3) the tax laws of the United States make it
20 difficult for domestically-owned United States com-
21 panies to compete abroad and in the United States;

22 (4) a domestically-owned corporation is dis-
23 advantaged compared to a United States subsidiary
24 of a foreign-owned corporation; and



1 (5) international competitiveness is forcing
2 many United States corporations to make a choice
3 they do not want to make—go out of business, sell
4 the business to a foreign competitor, or become a
5 subsidiary of a foreign corporation (i.e., engage in
6 an inversion transaction).

7 (b) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that passage of legislation to fix the underlying prob-
9 lems with our tax laws is essential and should occur as
10 soon as possible, so United States corporations will not
11 face the current pressures to engage in inversion trans-
12 actions.

Subparagraph (C) of section 45C(b)(2) of the Internal Revenue Code of 1986 (as proposed to be added by section 208 of the bill) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply with respect to any expense incurred after December 31, 2010.”.

